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Utah Court of Appeals

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William D. Peterson; Pro Se.

Bill O. Heder; Counsel for Appellee.

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IN THE UTAH COURT OF APPEALS

JENNIFER TEMPFER,

Petitioner and Appellee,

vs.

Case No. 20110462-CA

WILLIAM D. PETERSON

Respondent and Appellant.

BRIEF OF APPELLEE

Appeal from Stalking Injunction
issued May 10, 2011 by the Fourth District Court
Honorable James Brady

William D. Peterson Pro Se
68 W. Malvern Ave.
Salt Lake City, UT 84115

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APPELLATE COURTS
POSTMARKED

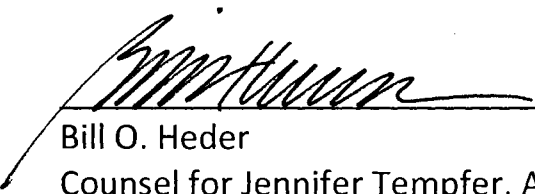
MAR 02 2012

CERTIFICATE OF COMPLIANCE

I certify that the following Brief of Appellee complies with the provisions and limitations of Rule 27, Utah Rules of Appellate Procedure. This brief contains 6,513 words, 24 pages (excluding exhibits), 13 pages of exhibits, and consists of 708 lines of total (including exhibits).

2-29-12

Date


Bill O. Heder

Counsel for Jennifer Tempfer, Appellee

TABLE OF CONTENTS

Table of Authorities.....	pg. 4
Jurisdictional Statement.....	pg. 5
Statement of Issues & Standard of Review.....	pg. 5
Constitutional/Statutory Provisions.....	pg. 7
Statement of the Case.....	pg. 7
Statement of Facts.....	pg. 8
Summary of Argument.....	pg. 13

- I. Appellant has failed to marshal the evidence as required on appeal.
- II. Appellant fails to show either a statutory or constitutional bases for the relief claimed on appeal.
- III. The Guardianship of Ruth Stevens is not relevant to the determination of whether or not the civil stalking injunction issued against Appellant is valid.
- IV. A guardianship proceeding under the Utah Probate Code is not invalidated for lack of a third party appearing to oppose the petition, and an appointment does not violate the U.S. Constitution, Article III (2) on the same basis.
- V. Double Jeopardy protections do not apply to invalidate the civil injunction issued by the District Court.
- VI. The District Court's civil injunction is not invalidated under the doctrine of entrapment.
- VII. The District Court's civil injunction is not invalid based on the Racketeer Influenced and Corrupt Organizations statute ("RICO") (18 USC 1962).

VIII. The District Court’s civil injunction is not invalidated by Appellant’s allegations of theft.	
IX. Appellant was not entitled to notice of guardianship proceedings.	
X. The Power of Attorney claimed by Appellant did not appoint him guardian of Ruth Stevens or trump the Court ordered guardianship.	
Argument.....	pg. 17
Conclusion.....	pg. 23
Signature of Counsel.....	pg. 24
Proof of Service.....	pg. 24

TABLE OF AUTHORITIES

Cases

<u>Martinez v. Media Paymaster Plus/Church of Jesus Christ of Latter-day Saints</u> , 164 P.3d 384 (UT 2008)].....	pg. 20–21, 24
<u>In re Adoption of J.M.</u> , 135 P.3d 902 (Utah App 2006).....	pg. 23, 28

Other Authorities

UCA § 75-5-303.....	pg. 25
UCA 75-5-309.....	pg. 23, 27
U.S. Constitution, Article III (2).....	pg. 21, 25
5 th Amendment, U.S. Constitution.....	pg. 21, 25
18 USC 1962.....	pg. 22, 26

JURISDICTIONAL STATEMENT

Pursuant to Utah Code Ann. § 78-4-103 (2)(j), The Court of appeals has appellate jurisdiction over cases transferred to the Court of Appeals from the Supreme Court. By notice issued June 22, 2011, this case was assigned to the Court of Appeals.

STATEMENT OF ISSUES/STANDARD OF REVIEW

Because Appellant has failed to provide a clear statement of issues presented, Appellee will attempt to identify for the Court's consideration, the issues presented on appeal (based on review of Appellant's brief) and the appropriate standard(s) of review.

1. Whether or not the Trial Court's issuance of a stalking injunction against Appellant constitutes double jeopardy, considering that Appellant had previously been arrested for trespassing on the Fillmore property of Ruth Stevens? **Standard of Review:** Issues of law are reviewed for correctness.
2. Whether or not the Trial Court violated U.S. Constitution Article III, Sec. 2 (1) in granting a guardianship over Ruth Stevens, lacking a case or controversy? **Standard of Review:** Federal Court: de novo review.
3. Whether or not the Trial Court's civil injunction against Appellant is

improper based on entrapment? **Standard of Review:** Issues of law are reviewed for correctness; issues of fact are reviewed against the clear weight of the evidence or clearly erroneous standard.

4. Whether or not the Trial Court's civil injunction against Appellant constitutes a RICO violation—assuming Appellant was entrapped twice, and assuming that two counts of entrapment constitute racketeering? **Standard of Review:** Issues of law are reviewed for correctness.
5. Whether or not the Trial Court's civil injunction against Appellant is somehow invalid due to alleged theft by Appellee of funds belonging to Ruth Stevens? **Standard of Review:** If applicable at all, questions of fact are weighed against the clear weight of evidence or clearly erroneous standard.
6. Whether or not the Trial Court's civil injunction against Appellant is invalid because Appellant, by virtue of his alleged Power of Attorney, was entitled to, but not given notice of the proceeding? **Standard of Review:** Issues of law are reviewed for correctness.
7. Whether or not the Power of Attorney claimed by Appellant trumps the Court ordered guardianship of Ruth Stevens and thereby nullifies the Trial Court's civil injunction against Appellant? **Standard of Review:** Issues of law are reviewed for correctness.

CONSTITUTIONAL/STATUTORY PROVISIONS

Due to the lengthy nature of Constitutional and Statutory Provisions called into question (though not *supplied*) by Appellant, the applicable text of such provisions is included as part of Exhibit "A".

1. Double Jeopardy Statute, Utah Code Ann. § 76-1-403(1):
2. Case or Controversy: United States Constitution, Article III (2)
3. Utah Entrapment Statute: Utah Code Ann. § 76-2-303(1):
4. RICO; United States Code Title 18, Part 1, Chapter 96 section 1962:
 - a. § 1962. PROHIBITED ACTIVITIES
5. Utah Theft Statute: Utah Code Ann. § 76-6-404:
6. Notice Statute for Guardianship Proceedings: Utah Code Ann. § 75-5-309
7. Power of attorney with appointment of conservator: Utah Code Ann. § 75-5-501(5).
8. General Powers and Duties of Guardian. Utah Code Ann. § 75-5-312.
9. Powers of conservator. Utah Code Ann. § 75-5-424.

STATEMENT OF THE CASE

After a hearing May 10, 2011 in which Appellant, William Donald Peterson, and Appellee, Jennifer Tempfer were both present, and wherein testimony and other

evidence was received, Judge James Brady of the Fourth District Court, Fillmore Division, issued a Civil Stalking Injunction against Appellant dated May 10, 2011. (case no. 110700059). The injunction prohibits Appellant from having any contact with Appellee, Jennifer Tempfer, or Ruth Stevens (Appellee's grandmother) or Mykan Stevens (Appellee's cousin).

In addition to filing numerous motions which have been denied by this Court, Appellant has appealed the civil stalking injunction.

STATEMENT OF FACTS

1. On May 10, 2011, Judge James Brady, of the Fourth District Court, Fillmore Division, issued a civil stalking injunction against Appellant, William Donald Peterson, a 74 year old male addressed at 68 W. Malvern Ave., Salt Lake City, UT 84115.
2. The following information was presented in written submissions to the Court, prior to the hearing.
 - a. Appellee (Jennifer Tempfer) learned of Appellant's interest in her grandmother (Ruth Stevens) on October 31, 2010.
 - b. The following week, Ruth told Jennifer that Appellant had proposed marriage to her.

- c. Shortly thereafter, Jennifer learned that Appellant was (and is) currently married.
- d. Though Jennifer had served as trustee and as agent with power of attorney for a number of years prior to these incidents, Appellant's entrance into a relationship with Ruth Stevens marked a new confusion, distrust and paranoia in Ruth about Jennifer's role.
- e. On the morning of November 24, 2010 Ruth called Appellant from Jennifer's home in Salt Lake (where Ruth had been staying temporarily).
- f. Appellant came to the home and promised to return Ruth that evening to Jennifer's home. He did not do so.
- g. Jennifer discovered two days later than Appellant had moved with Ruth in to Ruth's home in Fillmore, Utah.
- h. In the days that followed, Jennifer was in contact with Appellant's wife and several in-laws and his daughter Millie Nikopoulos. All expressed serious concerns about Appellant's likely exploitive intent and his mental and emotional instability.
- i. Under Appellant's influence, Ruth terminated the in-home care and assistance (food, medication, cleaning and hygiene) that she had been receiving for many months previous.

j. Neighbors and relatives who were unable to make contact with Ruth began to call Jennifer with their concerns.

k. Jennifer, having access to Ruth's accounts, began seeing checks for cash, totaling \$890 in cash withdrawals in the first three weeks of December 2010. Inasmuch as Jennifer was paying Ruth's bills and utilities, these withdrawals were highly suspect.

l. Jennifer was notified by Zion's Bank in Fillmore that Appellant had come to the bank and attempted to gain access to Ruth's accounts by presenting his own draft of a power of attorney.

m. On December 24, 2010, Jennifer saw that a check drafted December 17, 2010 for \$100 to cash made out in Appellant's hand writing had cleared.

3. The following facts were presented and discussed during the hearing:

(Appellant failed to properly marshal this evidence)

a. Christmas day 2011, Appellee (Jennifer Tempfer), her husband and family drove to Fillmore to check on Ruth. Appellant was there in Ruth's home. Ruth was gaunt and incoherent. Jennifer checked her medications and saw that Ruth had not been taking her medications.

b. In a confrontation that ensued between Jennifer and Appellant,

Appellant became angry and threatening. Jennifer's husband and brother stepped in to stop Appellant's behavior and told him to leave.

c. Appellant refused to leave. Jennifer and her family left but returned the following day to take Ruth to Salt Lake. She informed Appellant that he was not allowed to stay in the Fillmore house without Ruth being there.

d. Appellant then took Ruth into the bathroom and locked the door for 5 to 10 minutes. When they finally came out of the bathroom Ruth was confused and very distraught—however Jennifer succeeded in taking Ruth with her family to Salt Lake, and closing the Fillmore house.

e. On January 3, 2011 Jennifer overheard a telephone conversation between Ruth and Appellant wherein he told Ruth that he needed to marry her immediately. He spoke of their ability to live on her social security checks and also said that there was no waiting period on marriage outside of Utah.

f. Appellant appeared at Jennifer's home in Salt Lake the next day and when asked to leave, he refused. The police were called and a report was filed.

g. Several days later the Division of Adult Protective Services came to Jennifer's home based on a claim of kidnapping filed by Appellant. After

interviews were completed, Kim Mack of APS recommended that Jennifer obtain a guardianship to protect Ruth from Appellant.

h. Police records supplied to the Court showed that on the night of February 24, 2011, Appellant appeared at Ruth's Fillmore home demanding to see Ruth. When told to leave by another granddaughter who was living with and caring for Ruth, Appellant refused.

i. Peterson put his foot in the door when the granddaughter (Mykan Stevens) attempted to close it, and attempted to force his way in.

j. Mykan called the Fillmore police.

k. Prior to the police arriving, Mykan testified that Appellant proceeded to circle the house trying windows and sliding glass doors. Mykan stated that she was very frightened.

l. After the officer inquired and was informed that a guardianship was in place and that Appellant had been told to stay away from Ruth Stevens, Peterson was arrested for trespass and a report was filed.

m. On March 9, 2011 Appellant sent a package containing allegations against Jennifer to Ruth. The package was intercepted by Mykan Stevens.

When questioned by the Court at the injunction hearing, Peterson admitted sending the package.

Additional Facts of Court record:

4. On January 12, 2011, Jennifer filed a petition for appointment of guardian and ex parte petition for temporary appointment. Appellant was identified in the fact statement as “the Suitor.”
5. That same day, a temporary guardianship was ordered by the Fourth District Court, Judge Brady. (Fourth Dist. case no. 113700001 GU)
6. After a hearing held March 2, 2011 in Fillmore, Utah, a permanent guardianship was ordered and letters issued. Appellant was not present at nor given notice of the hearing.
7. Following the hearing and guardianship appointment, Appellant filed several documents with the Fourth District Court in Fillmore. By the Court’s order striking those pleadings, it showed that they failed to follow the Utah Rules of Civil Procedure, referenced multiple courts, multiple matters/cases, including police departments in Salt Lake County and Millard County, and contained a listing of parties including Fillmore City, William Donald Peterson and William (Bill) D. Peterson “who are not parties to this action.”

SUMMARY OF ARGUMENT

- I. Appellant has failed to marshal the evidence as required on appeal, or to

identify issues or present standards of review as required.

a. Appellant both failed to secure transcripts and records from the court below and neglected his duty on appeal to present all facts in support of the trial court's ruling and then demonstrate that the findings below "are not supported by substantial evidence." [Martinez v. Media Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 164 P.3d 384 (UT 2008)]

b. Because Appellant failed to satisfy the marshaling requirement, the Court may, in its discretion, assume that the record supports the factual findings. [id.]

II. Appellant fails to show either a statutory or constitutional bases for the relief claimed on appeal.

III. The Guardianship of Ruth Stevens is not relevant to the determination of whether or not the civil stalking injunction issued against Appellant is valid.

IV. A guardianship proceeding under the Utah Probate Code is not invalidated for lack of a third party appearing to oppose the petition, and an appointment does not violate the U.S. Constitution, Article III (2) on the same basis.

- V. The doctrine of Double Jeopardy does not invalidate the civil injunction issued by the District Court.
- a. Double Jeopardy, under the 5th Amendment, U.S. Constitution, applies to multiple proceedings against a person on the same offense. Appellant has not claimed to have been tried multiple times on the same offense, but rather, claims to have been subjected to legal process for stalking and trespass; two different offenses.
- VI. The District Court's civil injunction is not invalidated under the doctrine of entrapment.
- a. No peace officer is alleged or shown to have acted in cooperation with any third person to induce the commission of an offense or to obtain evidence of the commission of an offense by methods creating a substantial risk that the offense would be committed by a person not otherwise disposed to commit it.
- i. Appellee's only communication with Appellant was over the phone wherein he was told to stay away, warning him that she would call the police; therefore there is no evidence that she induced him to commit an offense.
- VII. The District Court's civil injunction is not invalid based on the Racketeer

Influenced and Corrupt Organizations statute ("RICO") (18 USC 1962).

a. Appellant has not shown conduct of any enterprise through an evident pattern of racketeering activity.

VIII. The District Court's civil injunction is not invalidated by Appellant's allegations of theft by Appellee.

a. Allegations of theft by Appellee are irrelevant to evidence supporting the District Court's issuance of a civil injunction against Appellant.

b. Appellant failed to present evidence of theft to the District Court.

IX. Appellant was not entitled to notice of guardianship proceedings.

a. UCA 75-5-309 does not contemplate or require notice of the proceedings to a third party who at the time of the petition is neither an adult relative, care-giver or custodian, guardian or spouse of the vulnerable adult.

X. The Power of Attorney claimed by Appellant did not appoint him guardian of Ruth Stevens or trump the Court ordered guardianship.

a. Ruth Stevens had not executed a directive by which she nominated Appellant as her guardian.

b. Ruth Stevens was incompetent and unable to make a nomination or execute a valid Power of Attorney at the time Appellant claimed to have

obtained his.

c. Once the District Court jurisdiction was invoked by a petition for appointment, the Court's jurisdiction includes the power to issue any orders and grant powers enumerated by statute under the probate code.

d. The Court ordered guardianship and conservatorship appointment for Ruth Stevens included control and authority over residential, medical, property and financial issues.

ARGUMENT

I. APPELLANT HAS FAILED TO MARSHAL THE EVIDENCE AS REQUIRED ON APPEAL, AND FAILED TO IDENTIFY ISSUES OR STANDARDS OF REVIEW .

Appellant failed to secure sufficient transcripts or records from the trial court and supply mandatory elements of the briefing process to the Court. On these bases, Appellants brief has been challenged. However he also neglected his duty to marshal the evidence. In order to challenge a trial court's factual findings, a party must marshal all the evidence in favor of the very findings they oppose on appeal. State v. Chavez-Espinoza, 2008 UT App 191, P7 (Utah Ct. App. 2008) (citing West Valley City v. Majestic Inv. Co., 818 P.2d 1311 (Utah Ct. App. 1991).

Where the challenging party fails to adequately marshal the evidence, the

appellate court will generally presume that the record supports the trial courts factual findings. Id. (citing Martinez v. Media Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 164 P.3d 384 (UT 2008)).

If the Court is disinclined to dismiss the appeal on the basis of Appellants disregard of pleading requirements (statement of issues and standards of review, etc.), because Appellant failed to satisfy the marshaling requirement, the Court may, in its discretion, assume that the record below supports the factual findings. In doing so, the Court should deny the appeal outright.

II. APPELLANT FAILS TO SHOW STATUTORY OR CONSTITUTIONAL BASES FOR THE RELIEF CLAIMED ON APPEAL.

A. *A guardianship proceeding under the Utah Probate Code is not invalidated for lack of an opposing third party and does not violate the U.S. Constitution, Article III (2) on the same basis.*

Article III(2) of the U.S. Constitution applies to Federal Courts and not to a State District Court's jurisdiction over the guardianship of an incapacitated adult. Nothing in the Utah Probate Code, under which such guardianships fall, requires participation by more than an interested party (as defined by the code) and the ward for whom the guardianship is sought—and perhaps an attorney for that ward. (UCA § 75-5-303). By inference, the Utah Supreme Court has long ago identified “the incompetent” as the adverse party in a guardianship proceeding,

because “his legal rights are the only rights affected. The proceeding is instituted to take from him the right to manage and control his property. It does not purpose to affect the rights of various third parties...” Glenn v. Rich, 106 Utah 232, 237-238 (Utah 1944). Therefore, the case and controversy argument is misplaced in this case and provides no basis for appeal.

B. *The doctrine of Double Jeopardy does not invalidate the civil injunction issued by the District Court.*

Courts invoke the so-called Blockburger test to determine whether the multiple punishments component of the Double Jeopardy Clause has been violated, asking whether , when a defendant is convicted under two separate statutes for the same conduct, conviction under the respective statutes “requires proof of a fact which the other does not.” If each crime does contain an element not contained in the other, the Double Jeopardy Clause is not offended.”

Evans v. Province, 11-6219, 2012 WL 29058 (10th Cir. Jan. 6, 2012) (citing Blockburger v. United States, 284 U.S. 299, 304 (1932)).

Appellant has not claimed or tried to show that he was tried multiple times on the same offense, nor that he was convicted of the same crime under two different statutes. Rather, he merely claims to have been subjected to legal process for stalking and trespass—which he seems to suggest are identical. Since the elements of stalking and trespass are different, double jeopardy does not apply.

C. *The District Court's civil injunction is not invalidated under the doctrine of entrapment.*

No peace officer is shown (or even alleged) to have acted in cooperation with a third person to induce Appellant to commit an offense, or to obtain evidence of the commission of an offense by methods creating a substantial risk that the offense would be committed by a person not otherwise disposed to commit it.

After the singular incident wherein Appellee told Appellant to leave her property (in Salt Lake County) and he refused, Appellee's communicated with Appellant over the phone wherein she again told him to stay away and warned that she would call the police. Therefore it has not been shown that Appellee induced Appellant to commit an offense. Nor has there ever been recognizably-alleged police misconduct. The Utah Supreme Court has stated: "this court adopted an objective standard for entrapment cases, which focuses solely on police conduct, rather than on the defendant's predisposition to commit a crime." State v. Torres, 2000 UT 100, 16 P.3d 1242, 1244 (citing State v. Udell, 728 P.2d 131, 133 (Utah 1986)). Without any allegation of police misconduct, and without asserting any facts to support the entrapment claim, it should not be considered.

D. *The District Court's civil injunction is not invalid based on the Racketeer Influenced and Corrupt Organizations statute (18 USC 1962).*

Appellant has not shown conduct of any enterprise through an evident pattern of racketeering activity, as those terms are defined in the statute. Because the elements of a RICO claim are neither alleged nor suggested by any evidence presented, the statute does not apply to invalidate the trial court's civil stalking injunction against Appellant.

E. *The District Court's civil injunction is not invalidated by Appellant's allegations of theft.*

Theft (by any party) is not an element of stalking, which is what is at issue on appeal. While Appellant has alleged theft in motions, he has never presented any evidence of it to the lower Court. Therefore, even if the allegation was applicable to the civil stalking injunction, (which it is not) it cannot be properly raised on this appeal.

F. *Appellant was not entitled to notice of guardianship proceedings.*

Utah's guardianship statute (UCA 75-5-309) lists those persons entitled to notice of a guardianship proceeding. That list references relatives and persons having custody. It does not include third parties, even if they claim power of attorney. Appellant's alleged power of attorney is not at issue, but it should be noted that the document was crafted by Appellant (and he attempted to exercise the power) after Ruth Stevens' doctor had already confirmed that she was

incompetent and in need of a guardian. Therefore, any power of attorney Appellant claims to have would be invalid for want of a competent grantor.

Furthermore, whether or not Appellant took part in the prior guardianship proceeding has no bearing on the facts which support the lower court's issuance of a civil stalking injunction against him.

It should be noted that Appellant's identity, communications and activities were disclosed to Judge Brady prior to the guardianship being issued. Similarly, the stalking injunction was issued against Appellant after full disclosure of his claim to have power of attorney.

G. *The Power of Attorney claimed by Appellant did not appoint him guardian of Ruth Stevens or trump the Court ordered guardianship.*

Appellant has produced no evidence showing that Ruth Stevens, while competent, executed a directive by which she nominated Appellant as her guardian, nor has he alleged as much. Instead, he has claimed that his power of attorney (obtained when Ruth Stevens was incompetent) trumped a court-ordered guardianship.

Even if a valid power of attorney existed, UCA § 75-5-501(5) shows that a court-appointed conservator governs an agent acting with power of attorney. The

Court may take judicial notice of the fact that powers of attorney are merely acts of delegation authorizing agents to act in specific ways on behalf of the principal—but not to control the principal. A guardianship is an appointment permitting control of a person, and a conservatorship appointment places any agent with legitimate power of attorney under the conservator's direction.

The District Court's jurisdiction was invoked by a petition for appointment of guardian and conservator. The Court's jurisdiction includes the power to issue any orders and grant powers enumerated by statute under the probate code. See, In re Adoption of J.M., 135 P.3d 902 (Utah App 2006) (by inference under a ruling involving juvenile court jurisdiction over guardianships). The Court-ordered guardianship and conservatorship appointment for Ruth Stevens included control and authority over residential, medical, property, and financial issues. Appellant's claimed authority under a power of attorney is subject to the authority granted to Appellee by the trial court.

CONCLUSION

Appellant has failed to properly brief the Court and has failed to properly marshal the evidence as required on appeal. Therefore the Court is entitled to assume that the lower court decision is supported by the evidence.

The Court should deny the appeal, not only based on the assumption that the lower court's decision was supported by the facts, but also based on the fact that Appellant has ignored pleading requirements and has failed to supply a valid legal or factual basis for the relief that he appears to be claiming.

SIGNATURE OF COUNSEL

DATED this 24th day of February, 2012.

MacArthur, Heder & Metler, PLLC


Bill O. Heder, Counsel for Appellee

PROOF OF SERVICE

I certify that on the 29th day of February, 2012, I caused the forgoing Brief of Appellee to be served upon Appellant by mailing two true and correct copies by U.S. mail, first class postage prepaid, addressed as follows:

William D. Peterson
68 W. Mlvern Ave.
Salt Lake City, UT 84115

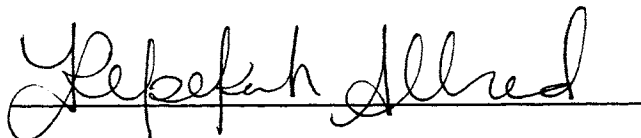


EXHIBIT "A"
Text of Applicable Constitutional or Statutory Provisions

Double Jeopardy Statute, Utah Code Ann. § 76-1-403(1):

76-1-403. Former prosecution barring subsequent prosecution for offense out of same episode.

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:

(a) The subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and

(b) The former prosecution:

(i) resulted in acquittal; or

(ii) resulted in conviction; or

(iii) was improperly terminated; or

(iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

Case or Controversy: United States Constitution, Article III (2)

(The judicial Power shall extend to all Cases, in Law and Equity, arising under this

Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.) (This section in parentheses is modified by the 11th Amendment.)

Amendment 11 - Judicial Limits. Ratified 2/7/1795.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Utah Entrapment Statute: Utah Code Ann. § 76-2-303(1):

76-2-303. Entrapment.

(1) It is a defense that the actor was entrapped into committing the offense.

Entrapment occurs when a peace officer or a person directed by or acting in

cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

RICO; United States Code Title 18, Part 1, Chapter 96 section 1962:

§ 1962. PROHIBITED ACTIVITIES

(a)It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate

family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b)It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c)It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d)It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Utah Theft Statute: Utah Code Ann. § 76-6-404:

76-6-404. Theft -- Elements.

A person commits theft if he obtains or exercises unauthorized control over the

property of another with a purpose to deprive him thereof.

Notice Statute for Guardianship Proceedings: Utah Code Ann. § 75-5-309

75-5-309. Notices in guardianship proceedings.

(1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;

(b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;

(c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found; and

(d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person.

75-5-501 (5). Power of attorney not affected by disability or lapse of time --

Agent responsibilities.

(5) A conservator may be appointed for a principal even though the principal has

a valid power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator, pursuant to court order as provided in Subsection 75-5-408(1)(d), has the same power the principal would have had, if the principal did not have a disability or was not incompetent, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(6) For the purposes of this section, "interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable.

General Powers and Duties of Guardian: Utah Code Ann. § 75-5-312

75-5-312. General powers and duties of guardian

(1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.

(2) Absent a specific limitation on the guardian's power in the order of appointment, the guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason

of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

75-5-424. Powers of conservator in administration.

(1) A conservator has all of the powers conferred in this chapter and any additional powers conferred by law on trustees in this state. In addition, a

conservator of the estate of an unmarried minor as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 75-5-209 until the minor attains majority or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2 of this chapter.

(2) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:

(a) Collect, hold, and retain assets of the estate, including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) Receive additions to the estate;

(c) Continue or participate in the operation of any business or other enterprise;

(d) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) Invest and reinvest estate assets in accordance with Subsection (2) above;

(f) Deposit estate funds in a bank including a bank operated by the conservator;

- (g) Acquire or dispose of an estate asset, including land in another state, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (h) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- (i) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;
- (j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;
- (k) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (l) Grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;
- (m) Vote a security, in person or by general or limited proxy;
- (n) Pay calls, assessments, and any other sums chargeable or accruing against or

on account of securities;

(o) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) Borrow money to be repaid from estate assets or otherwise; and advance money for the protection of the estate or the protected person, and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;

(s) Pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

- (t) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (u) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (v) Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian, or if none, to a relative or other person with custody of his person;
- (w) Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist him in the performance of his administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- (x) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.